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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-819

JOSE A. REYES, *Petitioner,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16, AND ELOY ORTEGA, President; Ray Mascarenas, Vice President; Fred Sandoval, Business Manager; John Yanes, Recording Secretary; George Quintana, Executive Board Member; Remigio Martinez, Executive Board Member; Frutoso Chavez, Secretary-Treasurer; Alex Archuleta, Past Secretary-Treasurer, and Willie Horcasitas, Member; *Respondents.*

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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IN THE

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No. 72-819

JOSE A. REYES, *Petitioner,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16, AND ELOY ORTEGA, President; Ray Mascarenas, Vice President; Fred Sandoval, Business Manager; John Yanes, Recording Secretary; George Quintana, Executive Board Member; Remigio Martinez, Executive Board Member; Frutoso Chavez, Secretary-Treasurer; Alex Archuleta, Past Secretary-Treasurer, and Willie Horcasitas, Member; *Respondents.*

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Pursuant to the Court's directive, Respondents file this Response to Petitioner's Petition for a Writ of Certiorari.

OPINIONS BELOW

The Memorandum Opinion and Order of the United States District Court for the District of New Mexico is reported at 327 F. Supp. 978 (Appendix A). The opinion affirming the District Court's Opinion and Order by the Court of Appeals for the Tenth Circuit is reported at 464 F. 2d 595 (Appendix B).

Petitioner's suggestion for a Rehearing En Banc was denied (Appendix C).

STATEMENT OF THE CASE

On September 14, 1968, the Respondent Union held a union trial. Petitioner faced, and was convicted of, several charges. The cases below were attempts by Petitioner to overturn his convictions and the penalties received by him. The union trial arose because of Petitioner's prior objectionable activities.

These offenses occurred on August 8, 1968.

The afternoon of August 8, 1968, Petitioner entered the Union Meeting Hall, and challenged the Union President, Eloy Ortega, to fight him. At that time, Petitioner threatened other union officials with physical harm and abuse. The Tenth Circuit Court found that Petitioner's behavior was "generally violent, profane and vulgar."

In the evening of that same day, the Union attempted to hold a regular business meeting. Petitioner disrupted the meeting by speaking without being recognized.

Further, Petitioner refused to sit down or yield the floor upon request by the Union President. Petitioner's continually disruptive actions and obnoxious

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behavior forced the union meeting to be adjourned without having transacted any business.

The Union subsequently took disciplinary action against Reyes as above described.

Written notice of the charges were mailed on August 13, 1968, to Petitioner. On August 20, 1968, Petitioner attempted to disqualify the entire Union Executive Board from participating in his hearing. Such an extraordinary request was not covered by any section of the Union's Constitution or Rules. Accordingly, the Union Executive Board requested an opinion from the International as to whether the entire Board could be disqualified. The answer was that Petitioner had no right to disqualify the entire Board.

Eloy Ortega did disqualify himself voluntarily from sitting on the Executive Board. He was President of the Union and appeared as the prosecuting witness. The members of the Executive Board at that time were Eloy Ortega, Pedro Griego, Joe Mascarenas, Fred Sandoval, Frutoso Chavez, George Quintana, John Yanes and Remigio Martinez.

Petitioner then requested an extension of time for his trial date, for the purpose of better preparing his defense. Petitioner was granted this requested extension of time by the Executive Board. The Union Trial was held on September 14, 1968. The charges against Mr. Reyes included the following:

1. Attempting to incite violence while under the influence of alcohol and threatening the local union president.
2. Disrupting the regular membership meeting held on August 8, 1968, to the point where regular union business could not be conducted.

The Union trial court found Petitioner guilty of both charges. Petitioner was suspended from the Union for three (3) years; he was not allowed to attend meetings for that period of time. Petitioner was also fined the sum of Two Hundred Fifty Dollars ($250.00). He was *not* disallowed from participating in the union's election.

The Union's Constitution allowed Petitioner to appeal the Local's decision to the International Union. Petitioner exercised that right. By letter of January 21, 1969, the International Union notified the Respondent Union of its decision. The decision to suspend Petitioner was affirmed. The fine levied upon Petitioner was reduced from Two Hundred Fifty Dollars ($250.00) to One Hundred Dollars ($100.00). Petitioner took no further administrative action. Rather, Petitioner then filed the instant lawsuit.

Petitioner argues substantive portions of his case within that portion of his Petition, styled as "Statement of the Case." Generally, Petitioner's argument is that the members of the union trial board were biased against him. Petitioner then states that this bias resulted in his not receiving a full and fair hearing.

This Court should note that no evidence of bias was ever produced by Petitioner before, during or after his union trial. Petitioner did say he "thought" the members were biased. Of course, the members of the trial board and Petitioner represented different political cliques within the union. But Petitioner could submit no evidence showing, or tending to show, bias on the part of the union trial board members.

The Respondent union operated under established remedial procedures. If a member violated union

rules, he was tried by the Executive Board—the union's elected officials.

Petitioner attempted to take advantage of this procedure by the simple expedient of offering to fight the union president and insulting the remainder of the union's elected officials. When Petitioner subsequently disrupted the union's business meeting and the union instituted disciplinary proceedings, Petitioner sought to avoid being disciplined at all by posturing that the union's elected officials were biased because of his offensive behavior. Thus, Petitioner would have, at once, completely frozen the union's established remedial procedures and avoided being punished for behavior which was offensive to the extent that he now claims it must have biased the Board members against him.

The opinion and order rendered by the District Court for the District of New Mexico reflects the extent to which the Court went to allow Petitioner to show his rights were violated by the union proceeding (See Appendix A). The Court there stated as follows:

> "The Court admitted testimony at the trial concerning all the circumstances surrounding the charges and union trial of Mr. Reyes. The Court finds that substantial evidence was presented at the trial which showed that the incidents upon which the charge was based were not feigned or imaginary.
>
> The Court finds that the charge and disciplinary proceedings were brought against Jose Reyes for legitimate reasons and not for the purpose of denying him rights guaranteed by the LMRDA." (Appendix A, p. 2a)

This Court should note here that the District Court also stated that due process under the Labor-Manage-

ment Relations Disclosure Act requires more than an adherence to mere mechanical formalities. The Court also held that the scope of free speech guaranteed to members under the Act is even broader than that under the United States Constitution. The Court then held as follows:

> "The right of free speech protected by the act does not however, give a member license to advance his views by threatening physical harm to elected union officials. *The charges and evidence adduced at trial show that Mr. Reyes was disciplined for threatening the union president and not for advocating his views.*" (Appendix A, p. 2a; Emphasis supplied.)

On appeal, the judgment in favor of Respondents was upheld. The Tenth Circuit Court stated as follows:

> "The incident giving rise to the charges and disciplinary action occurred on August 9, 1968. On that afternoon Reyes entered the Union Meeting Hall and challenged the Union President to fight him. He also threatened various other officials and was generally violent, profane and vulgar. That evening Reyes disrupted the Union meeting and caused it to be adjourned without ever having transacted any business." (Appendix B, p. 4a)

The Court then reviewed the procedure followed before, during and after the union trial of Petitioner. Regarding the scope of review of the disciplinary proceedings by the lower court, the Tenth Circuit Court stated as follows:

> "The trial court correctly interpreted its role in reviewing the union disciplinary proceeding. That

court, when reviewing such disciplinary action, is not free to substitute its judgment for that of the union; it must uphold the Union's findings if supported by any evidence produced at the disciplinary trial conducted by an unbiased trial body which afforded a fair and impartial determination of guilt. The trial court did not err in its self-imposed limitation on review, nor do we find error in its decision upholding the disciplinary sanctions imposed." (Appendix B, p. 5a)

The trial court heard extensive testimony regarding the lack of bias on the part of the members of the Executive Board in dealing with Petitioner's disciplinary proceedings. Based upon the evidence, the trial court concluded that Petitioner received a "full and fair hearing" during his disciplinary proceedings.

REASONS FOR REFUSING THE WRIT

I

Petitioner Has Failed To Bring Himself Within the Purview of Supreme Court Rule 19 (1)(b)

While Petitioner herein makes numerous factual allegations concerning the proceedings, many of which find no support in the record as discussed elsewhere herein, he makes no effort to comply with Rule 19 of this Court. Nowhere does he show that there is any conflict between the decision herein and a similar decision in any other Circuit; nowhere does he demonstrate that the decision herein is in conflict with any decision of this Court; nowhere does he show that any important question of Federal Law has been presented which has not been, but should be, decided by the Supreme Court. Neither has he shown any departure from recognized procedure by the Court of Appeals, or sanction thereof

by the Court of Appeals on the part of the District Court to invoke the Court's supervisory powers.

Respondent submits that if Petitioner has researched the question and discovered any authority which would bring him within the purview of Rule 19 (1)(b), he should divulge it. Since he has not, he has failed to carry his burden and the Writ should not issue.

II

A Writ of Certiorari to the Court of Appeals Is Untimely Since Said Court No Longer Has Jurisdiction of the Case

On September 7, 1972, Petitioner's motion for rehearing and suggestion for rehearing *en banc* was denied (Appendix C). On September 20, 1972, the mandate was stayed until October 20, (Appendix D) and on October 24 the mandate was further stayed until November 15 (Appendix E). On November 16, the Court of Appeals issued its mandate, thus vesting jurisdiction once again in the United States District Court for the District of New Mexico (Appendix F). This Petition was filed on December 4, 1972.

On February 16, 1973, Respondents received Notice from Clerk of the District Court regarding the disposition of the exhibits in this case (Appendix G). Respondents are unaware of the present disposition of said exhibits, but would point out that Rule 21, Rules of the United States District Court for the District of New Mexico, provides that the Clerk may destroy them, and there may not now be a full record for review.

Thus, jurisdiction is now in the District Court and a Writ of Certiorari to the Court of Appeals would be of no effect.

III

he Trial Court Applied the Correct Test in Determining Its Scope of Review of the Disciplinary Procedures Against Petitioner

This Court should note what Petitioner attempts ere. This Court is requested to look beyond the ecord of this case. Petitioner requests that this Court valuate his union trial "against the background of the articipants." Petitioner requests that this Court determine the impartiality and motivations of the ersons acting as judges and their interest and involvement in the subject, and subject matter being tried."

Petitioner thus invites the Court into a quagmire. ubstantial evidence exists in the trial court record to efute Petitioner's allegations of bias. However, Petiioner would have the Court go beyond the record and mpute attitudes to the trial board members. The angers are obvious and substantial.

The issue here is as follows:

1. Did the trial court and the Tenth Circuit Court apply the correct rule regarding the scope of judicial review of the union trial?

The standards which the Respondent Union had to atisfy during its disciplinary proceeding against Petiioner are found in 29 USC Section 411(a)(5). They re as follows:

> (5) safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled or otherwise disciplined . . . unless such member has been,
>
> (a) served with written specific charges;
>
> (b) given a reasonable time to prepare his defense;
>
> (c) afforded a full and fair hearing."

Petitioner does not attack the first two criteria.

What is the definition of a "full and fair hearing"? The elements of a full and fair hearing resemble those elements of constitutional due process. That is, they include notice, reasonable opportunity to be heard, the right to present evidence and the right to confront witnesses, and cross-examine them. *Parks* v. *International Brotherhood of Electrical Workers,* 314 F. 2d 886 (C.A. Md. 1963), cert. den. 835 S. Ct. 1111, 372 U.S. 976, 10 L. Ed. 2d 142; *Smith* v. *General Truck-Drivers, Warehousemen and Helpers Union Local 467 of San Bernardino and Riverside Counties,* 181 F. Supp. 14 (D.C. Col. 1960).

Upon appeal from such a proceeding, the Court is neither authorized nor required to weigh evidence presented at the union trial. The Court may not substitute its judgment regarding the credibility of the witnesses and the evidence presented at the union trial. *Phillips* v. *Teamsters, Chauffeurs, Warehousemen and Helpers Local No. 560,* 209 F. Supp. 768 (D.C. N.J. 1962); *Burke* v. *International Brotherhood of Boilermakers,* 417 F. 2d 1063 (9th Cir. 1969), *aff'g* 302 F. Supp. 1345 (N.D. Cal. 1967).

Petitioner received written notice of the charges. He requested and obtained an extension of time in order to better prepare his defense. He testified or was given the opportunity to testify, in his own behalf. He confronted the witnesses who testified against him. He was allowed the opportunity to cross-examine the witness.

Under the above authority, Respondents submit that the disciplinary proceedings against Petitioner satisfied due process requirements. Respondents further

submit that the Courts below applied the correct test in determining the scope of inquiry into the disciplinary hearing for Petitioner. However, this Court should note the extent to which the trial court went in allowing Petitioner to present evidence regarding the fairness of his union trial. The trial court stated that due process under the Labor-Management Relations Disclosure Act requires more than adherence to mere technical formalities. Further, the trial court stated that the court could properly scrutinize the union trial to determine whether the institution of charges was improperly motivated. The trial court then stated as follows:

> "*The Court admitted testimony at the trial concerning all the circumstances surrounding the charges and union trial of Mr. Reyes.* The court finds that substantial evidence was presented at the trial which showed that the incidents upon which the charge was based was not feigned or imaginary.
>
> The Court finds that the charge and disciplinary proceeding were brought against Jose Reyes for legitimate reasons and not for the purpose of denying him rights guaranteed by the LMRDA. (Appendix A, p. 2a; Emphasis supplied.)

The language flatly refutes Petitioner's allegation that his union trial was for political reasons. Further, the language refutes Petitioner's allegation that the record reflects any bias or prejudgments by the union trial board members. The trial court allowed into the record all the evidence Petitioner could muster regarding his allegation of not receiving a full and fair union trial. Upon a review of all of the evidence, the trial court held against Petitioner.

Petitioner now requests this Court to ignore the trial court's efforts, the record, and the above authority. Petitioner's request should fail.

IV

Petitioner Was Entitled To, and Received, a Full and Fair Hearing During This Disciplinary Proceeding

Petitioner's argument here is apparently identical to that made under Point I of his Petition. The only added element seems to be that he failed to receive a full and fair hearing as a matter of law. That is, Petitioner alleges that the union trial board was prejudicial against him as a matter of law.

The argument is confusing. As argued above, the trial court went into the circumstances surrounding Petitioner's union trial extensively. Apparently, realizing the import of the trial court's action, Petitioner attempts to sidestep the problem by arguing that, as a matter of law, the trial board members were biased.

Petitioner cites no authority to support this proposition. The *Parks* case, supra, is not authority for the proposition.

However, Respondents do wish to call the Court's attention to several misstatements of fact by Petitioner under this point of fact.

Petitioner alleges that he attacked the members as "having been in election irregularities, embezzlement and breach of fiduciary duties" prior to his union trial.

This statement is not true. The man who was accused of embezzlement at a time prior to Petitioner's

union trial was Alex Archuleta. Mr. Archuleta didn't even sit on the board which heard the evidence at Petitioner's union trial. Further, Mr. Archuleta was not a member of the union executive board. No other member of the board was accused of embezzling union funds.

Further, no testimony was adduced showing or hinting that any of the other board members were accused of election irregularities or a breach of fiduciary duties.

The record does not reflect that the union's International Representative initiated and brought the charges against Petitioner. The charges against Petitioner were initiated and brought by Eloy Ortega, the union president. The record does reflect that Eloy Ortega requested help from the International Representative in assuring that Mr. Ortega properly drew the written charges against petitioner. The International Representative was approached solely to assure that the charges were procedurally proper under the union constitution and by-laws.

Petitioner further implies that the trial was held for the sole purpose of disallowing his participation in a union election. (See Petitioner's Petition, pp. 5, 19). The trial court record does not so reflect. Indeed, Petitioner was a candidate in the second election, as reflected by the ballots for the first and second union elections. (See Appendices H and I) Petitioner campaigned actively throughout the state. He was defeated. Petitioner's allegation that he was disallowed from participating in the second union election is a misstatement of fact.

V

The Tenth Circuit Court's Interpretation of the Scope of Review of the Union Trial Board's Disciplinary Action Was Correct; the District Court's Inquiry Into the Facts Satisfied Any Possible Requirements Under the Labor-Management Relations Disclosure Act

The initial weakness in Petitioner's argument here is that he ignores the fact that the trial court heard evidence regarding the charges made against Petitioner by his union. Further, the trial court heard evidence regarding the unbiased and disinterested nature of the executive board members. The trial court's opinion states clearly that the trial court heard evidence and satisfied itself that Petitioner was not prejudiced under either issue.

Further, Petitioner attempts to impress this court with how "minor" Petitioner's offenses against the union were. The argument is remarkable. It is uncontradicted (and was reflected in the trial court's opinion) that Petitioner was disciplined for threatening physical harm to union officials (Appendix A, p. 2a). Further, Petitioner was disciplined because he disrupted a regular union business meeting to an extent that it had to be adjourned before transacting any business. (Appendix B, p. 4a)

Petitioner's argument that these offenses must be balanced against his freedom of speech is correct. The trial court balanced these considerations, and held against Petitioner.

CONCLUSION

For the foregoing reasons Respondents respectfully submit that this Court should refuse to grant a Writ of Certiorari to review the decision below.

Respectfully submitted,

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Attorney for Respondents

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. 7981 Civil

JOSE A. REYES, *Plaintiff*,

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16, et al., *Defendants*.

Memorandum Opinion and Order

The scope of the Court's review in a union disciplinary proceeding is limited to insuring that the union member received due process at the hands of the trial board. *Phillips* v. *Teamsters, Chauffeurs, etc., Local Union No. 560*, 309 F.Supp. 768, 771, 772 (1962). In most cases, if the procedural requirements of the Labor-Management Reporting and Disclosure Act (LMRDA) are, in fact, met, the Court need look no further. Those standards are enumerated in *Section 101(a)(5)* of the Act. *29 U.S.C.A. § 411(a) (1965).*

> "Safeguards against improper disciplinary action. No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for non-payment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defenses; (C) afforded a full and fair hearing."

The Court finds that the trial board complied with these requirements. Due process under the LMRDA, however, as in other contexts, requires more than adherence to mere mechanical formalities. If the disciplinary proceeding has been instituted for the purpose of denying the member rights guaranteed to him by the Act, the Court may scrutinize the entire proceeding and the surrounding circum-

stances to determine whether the institution of charges was improperly motivated. *Gleason* v. *Chain Service Restaurant*, 300 F.Supp. 1241, 1259 (1969).

The Court admitted testimony at the trial concerning all the circumstances surrounding the charges and union trial of Mr. Reyes. The Court finds that substantial evidence was presented at the trial which showed that the incidents upon which the charge was based were not feigned or imaginary.

The Court finds that the charge and disciplinary proceeding were brought against Jose Reyes for legitimate reasons and not for the purpose of denying him rights guaranteed by the LMRDA.

The scope of free speech guaranteed to members under the Act is broader than that guaranteed by the Constitution. Congress made it so in order to permit vigorous debate on matters of union policy. *Salzhandler* v. *Caputo*, 316 F.2d 445 (1963). The right of free speech protected by the Act does not, however, give a member license to advance his views by threatening physical harm to elected union officials. The charges and evidence adduced at trial show that Mr. Reyes was disciplined for threatening the union president and not for advocating his views.

It Is, Therefore, Ordered and Adjudged that the plaintiff take nothing by reason of his complaint in this cause and action, and the merits of the case having been decided in favor of the defendant and against the plaintiff.

It Is Further Ordered and Adjudged that the complaint and this cause of action be, and the same are hereby, dismissed with prejudice.

Dated this 11th day of June, 1971.

/s/ H. Vearle Payne
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JULY 1972, TERM

No. 71-1607

JOSE A. REYES, *Plaintiff-Appellant,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 16, et al., *Defendants-Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

(District Court No. 7981)

Leonard L. Pickering, Albuquerque, New Mexico, for Plaintiff-Appellant.

John Quinn, Santa Fe, New Mexico, for Defendants-Appellees.

Before PHILLIPS, HILL and BARRETT, United States Circuit Judges.

HILL, Circuit Judge.

This is an appeal from a judgment, after trial to the court in the District of New Mexico, denying appellant's requested relief based on his complaint that disciplinary action imposed upon him by Laborers International Union, Local 16 (Union) was in violation of rights guaranteed under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401 *et seq.*

On appeal, Reyes asserts the trial court erroneously limited its review of the disciplinary proceeding to determin-

ing whether or not the union had complied with safeguards provided in 29 U.S.C. § 411(a)(5) against improper union disciplinary action. Additionally, appellant asserts error in the trial court's failure to consider his direct assault on the union's authority to impose the disciplinary sanction of three years' suspension from attending union meetings and a fine of $250. In attacking the judgment of the trial court, Reyes contends the court erred in its finding that he had been afforded a full and fair hearing by the union. He asserts this finding is not only unsupported by substantial evidence, but that it is contrary to the preponderant evidence. Reyes also contends the suit in the lower court was justified on the basis of his allegations of misreporting by the officers concerning the Union's financial matters. The trial court refused all of Reyes' requested relief and he now appeals also seeking recovery of attorney and accounting fees and costs.

The facts disclose that Reyes was an active and vocal member of the Union. He had previously opposed the Union management as a member of a slate of opposing candidates in a previous election which he lost and subsequently had set aside due to election irregularities. Reyes had also sent various letters to the Department of Labor, United States senators and representatives, requesting investigations of the Union and alleging embezzlement and breach of fiduciary duties by the Union's officers. The incident giving rise to the charges and disciplinary action occurred on August 9, 1968. On that afternoon Reyes entered the Union meeting hall and challenged the Union president to fight him. He also threatened various other Union officials and was generally violent, profane and vulgar. That evening Reyes disrupted the Union meeting and caused it to be adjourned without ever having transacted any business. Charges were filed by the Union president against Reyes, and notice of the charges was mailed to Reyes on August 13, 1968. On August 20, 1968, Reyes requested the entire Executive Board be disqualified

from participating in his hearing. A hearing was held September 14, 1968 before a Trial Board comprised of some of the members of the Executive Board, together with Fred Gardner, the International representative. After hearing testimony from both Ortega, the Union president whom Reyes had challenged, and Reyes, the Trial Board imposed the suspension and fine. On appeal to the General Executive Board of the Laborers' International Union, the fine was reduced to $100 and the three-year suspension was upheld. Reyes subsequently filed his complaint in the district court seeking further relief.

The trial court correctly interpreted its role in reviewing the union disciplinary proceeding. That court, when reviewing such disciplinary action is not free to substitute its judgment for that of the Union; it must uphold the Union's findings if supported by any evidence produced at the disciplinary trial conducted by an unbiased trial body which afforded a fair and impartial determination of guilt.[1] The trial court did not err in its self-imposed limitation on review, nor do we find error in its decision upholding the disciplinary sanctions imposed.

We further are not moved by appellant's argument that the suspension from attending meetings violated his rights as a Union member. Suspension is expressly recognized in 29 U.S.C. § 411(a)(5) as one of the disciplinary actions for which the procedural safeguards must be afforded. In Lewis v. American Fed'n of State Employees, 407 F.2d 1185 (3d Cir. 1969), *cert. denied*, 396 U.S. 866, reversing the trial court and upholding the decision of the union to expell one of its members, Judge Aldisert stated at 1193, "disciplinary provisions [of the Union constitution] which call for expulsion will be enforced so long as the constitutionally-mandated grounds for expulsion are not of them-

[1] Burke v. International Bhd. of Boilermakers, 417 F.2d 1063 (9th Cir. 1969), *aff'g* 302 F.Supp. 1345 (N.D.Cal. 1967).

selves illegal as violating public policy . . . ." We have not been apprised of any provision of the Union constitution which was violated by Reyes suspension.

Appellant lastly asserts his entitlement to costs and fees incurred in the accounting and in this action. Title 29 U.S.C. § 501(b) provides, *inter alia*, for the allocation of "a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit . . . and . . . for any expenses necessarily paid or incurred by him in connection with the litigation." Recovery under the statute has not been restricted to a limited monetary recovery by the Union, but rather has included any benefit realized by the Union.[2] The record does not reflect any benefit conferred on the Union by the institution of the action by Reyes.

Affirmed.

---

[2] Bridge Workers Local 92 v. Norris, 383 F.2d 735 (5th Cir. 1967).

APPENDIX C

JULY TERM—SEPTEMBER 7, 1972

Before Honorable David T. Lewis, Chief Judge; and Honorable Orie L. Phillips, Honorable Delmas C. Hill, Honorable Oliver Seth, Honorable William J. Holloway, Jr., Honorable Robert H. McWilliams, Honorable James E. Barrett and Honorable William E. Doyle, Circuit Judges.

No. 71-1607

JOSE A. REYES, *Plaintiff-Appellant,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16 and ELOY ORTEGA, President; et al., *Defendants-Appellees.*

This matter comes on for consideration of the petition for rehearing and suggestion for rehearing en banc filed by plaintiff-appellant in the captioned case.

Upon consideration whereof, the petition for rehearing is denied by Circuit Judges Phillips, Hill and Barrett, to whom the case was argued and submitted.

The petition for rehearing having been denied by the original panel to whom the case was argued and submitted and no member of the panel nor judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, Rule 35(b), Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

HOWARD K. PHILLIPS, *Clerk.*

By /s/ HELEN R. BARTHA
Deputy Clerk.

APPENDIX D

SEPTEMBER TERM—SEPTEMBER 20, 1972

Before Honorable Orie L. Phillips, Honorable Delmas C. Hill, and Honorable James E. Barrett, Circuit Judges.

No. 71-1607

JOSE A. REYES, *Plaintiff-Appellant,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 16, and ELOY ORTEGA, President, RAY MASCARENAS, Vice President, FRED SANDOVAL, Business Manager, JOHN YANES, Recording Secretary, GEORGE QUINTANA, Executive Board Member, REMIGIO MARTINEZ, Executive Board Member, FRUTOSO CHAVEZ, Secretary-Treasurer, and WILLIE HORCASITAS, Member, *Defendants-Appellees.*

Upon consideration of the motion of Appellant Jose A. Reyes for stay of mandate pending certiorari, it is

ORDERED that the mandate is stayed until October 20, 1972 and that if on or before that date there is filed with the Clerk of the Court of Appeals a notice from the Clerk of the Supreme Court of the United States that appellant has timely filed a Petition for Writ of Certiorari in the Supreme Court, the stay shall continue until final disposition by the Supreme Court.

/s/ HOWARD K. PHILLIPS
Howard K. Phillips
Clerk

APPENDIX E

SEPTEMBER TERM—OCTOBER 24, 1972

Before Honorable Orie L. Phillips, Honorable Delmas C. Hill, and Honorable James E. Barrett, Circuit Judges.

No. 71-1607

JOSE A. REYES, *Plaintiff-Appellant,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 16, et al., *Defendants-Appellees.*

Upon consideration of Appellant's motion for further stay of mandate pending certiorari, it is

ORDERED that the mandate is stayed until November 15, 1972, and that if on or before that date there is filed with the Clerk of the Court of Appeals a notice from the Clerk of the Supreme Court of the United States that appellant has timely filed a Petition for Writ of Certiorari in the Supreme Court, the stay shall continue until final disposition by the Supreme Court.

/s/ HOWARD K. PHILLIPS
Howard K. Phillips
Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
OFFICE OF THE CLERK
DENVER, COLORADO 80202

November 16, 1972

Mr. E. E. Greeson, Clerk
United States District Court
P. O. Box 689
Albuquerque, New Mexico 87103

Re: No. 71-1607, Jose A. Reyes v. Laborers' International Union of North America, etc., et al. (District Court No. 7981)

Dear Mr. Greeson:

In accordance with Rule 41 of the Federal Rules of Appellate Procedure, effective July 1, 1968, I am enclosing a certified copy of the judgment and a copy of the opinion, which shall constitute the mandate of this Court. You will please file this mandate in the records of your court immediately upon receipt of it by direction of this Court. I am also enclosing a form of receipt for you to sign and return to this office.

The original record on appeal will be returned to you at a later date.

Very truly yours,

/s/ HOWARD K. PHILLIPS
Howard K. Phillips,
Clerk

HKP/li

Enclosures

cc: Leonard L. Pickering, Esquire, Attorney at Law, 920 Ortiz Drive, N.E., Albuquerque, New Mexico 87108

John F. Quinn, Esquire, Attorney at Law, 342 East Manhattan Avenue, Santa Fe, New Mexico 87501

APPENDIX G

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
OFFICE OF THE CLERK
ALBUQUERQUE, NEW MEXICO

E.E. GREESON
CLERK

P.O. BOX 589

February 14, 1973

Mr. Leonard L. Pickering
Attorney at Law
920 Ortiz N.E.
Albuquerque, N. M. 87108

Mr. John Quinn
Attorney at Law
P. O. Drawer A
Santa Fe, New Mexico 87501

Gentlemen:

Re: Reyes vs. Laborers' Int'l et al

Case Number 7981 Civil

Local rules of this court numbered 8(d) and 21(e) directs that exhibits and depositions, oral and written interrogatories be returned to the parties after judgment is final.

Please advise whether you desire (exhibits) (depositions) (interrogatories) returned. If I do not receive a response within two weeks advising as to disposition, I will assume the same may be disposed of by my office.

Sincerely,

E. E. GREESON, *Clerk*

By MAYRIL WARNER
Deputy Clerk

Appendix H

OFFICIAL BALLOT

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL NO. 16

Election of Officers Ballot for a term of Three Years

Election held June 7, 8, 9, 10, 11 and 12, 1968

For President — Vote for One

ELOY ORTEGA	☐
ARTHUR ANAYA	☒
PABLO J. VALDEZ	☐

For Vice-President — Vote for One

(JOE) IGNACIO APODACA	☒
RAY JOE MASCARENAS	☐
HERMAN MAESTAS	☐
ANTONIO A. (TONY) ROMERO	☐

For Recording Secretary — Vote for One

JOHN YANES	☐

For Secretary-Treasurer — Vote for One

JOSE A. REYES	☐
JACINTO GALLEGOS	☒
ALEX ARCHULETA	☐
FRUTOSO CHAVEZ	☐

For Business Manager — Vote for One

JESSE McCONNELL	☐
ALFRED SANDOVAL	☒
JUAN JARAMILLO	☐
ALBERT ESQUIBEL	☐
CELESTINO MARTINEZ	☐

For Sergeant-at-Arms — Vote for One

J. R. RODRIGUEZ	☒

For Auditors — Vote for Three

JESUS ORNELAS	☐
JOE CHAVEZ	☐
LAZARO HERRERA	☒

For Executive Board — Vote for Two

JOE E. VASQUEZ	☐
GEORGE QUINTANA	☒
JOE R. BACA	☐
FRANK PADILLA	☐
PETE GRIEGO	☐
REMIGIO MARTINEZ	☐
[illegible]	☐

BLEED THROUGH POOR COPY

Appendix I

OFFICIAL BALLOT

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL NO. 16

Election of Officers Ballot for a term of Three Years

Election held October 4, 5, 6, 7, 8, and 9, 1968

For President — Vote for One

- ELOY ORTEGA [X]
- ARTHUR ANAYA [ ]
- PABLO J. VALDEZ [ ]

For Vice-President — Vote for One

- JOE IGNACIO APODACA [ ]
- RAY JOE MASCARENAS [X]
- HERMAN MAESTAS [ ]
- ANTONIO A. (TONY) ROMERO [ ]

For Recording Secretary — Vote for One

- JOHN YANES [X]

For Secretary-Treasurer — Vote for One

- JOSE A. REYES [ ]
- JACINTO GALLEGOS [ ]
- ALEX ARCHULETA [ ]
- FRUTOSO CHAVEZ [X]

For Business Manager — Vote for One

- JESSE McCONNELL [ ]
- ALFRED SANDOVAL [X]
- JUAN JARAMILLO [ ]
- ALBERT ESQUIBEL [ ]
- CELESTINO MARTINEZ [ ]

For Sergeant-at-Arms — Vote for One

- J. R. RODRIGUEZ [ ]

For Auditors —Vote for Three

- JESUS ORNELAS [ ]
- JOE CHAVEZ [ ]
- LAZARO HERRERA [ ]

For Executive Board — Vote for Two

- JOE E. VASQUEZ [ ]
- GEORGE QUINTANA [X]
- JOE R. BACA [ ]
- FRANK PADILLA [ ]
- PETE GRIEGO [ ]
- REMIGIO MARTINEZ [X]
- [ ]

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